From: Neil Stanley [mailto:neil.stanley@tsbg.com]
Sent: Monday, February 25, 2019 11:53 AM
To: Comments
Subject: February 6, 2019 - Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions; Comment Request (RIN 3064–AE94)

February 25, 2019

To Robert E. Feldman, Executive Secretary

Attention: Comments Regarding February 6, 2019 - Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions; Comment Request (RIN 3064–AE94)

Dear Mr. Feldman,

Every regulation should be clear about the context of what risk inspired the regulation and how the regulatory structure is designed to identify what vulnerability the regulation seeks to protect and how abuse would be limited by adherence to the regulation. A mature process considers the unintended consequences of ineffective and inefficient regulatory procedures. As such, the FDIC rate caps were implemented to prevent abuse of struggling institutions that to stay in business were willing to pay above-market rates for deposits from any available source. At the time of the regulation's founding there was support to impose a cap as a percentage of U.S. Treasury Notes.

It is important to base our analysis here on the awareness that the demand for bank funding is a "derived" demand. Financial institutions use deposits as the raw material to operate their business of banking. To make loans, the bank must first purchase the funds from the marketplace whether local or global.

In February 2018, I wrote a recommendation that was published to bring attention to this matter in the industry and regulatory circles. You can find that article at http://www.bankingexchange.com/news-feed/item/7391-viewpoint-fdic-rate-caps-miss-the-mark The recommendations suggested in that article were primarily to point out that no regulatory change was needed to improve the effectiveness of the current approach if the survey data was allowed to include the readily available data for non-standard terms that have historically been ignored in the rate cap calculations.

Since the decision has been made to consider more extensive regulatory revision, I would add to my recommendations last year. If we continue to use survey data from financial institutions, we should find methodologies that respect the following:

- The number of branches of one institution in a market does not enhance or diminish the depositors' assessment of the options. In other words, if one bank has for example 5,000 locations in the marketplace, that institution's offer should only be counted once because they only represent one option regardless of how many branches they operate. For considering a market rate cap in a national survey, shouldn't the highest rate offering from each financial institution available in any market be considered only once for every institution?

- The presence of online financial institutions is real in every market even when not observed by any branch locations in that market. For a local survey, shouldn't those financial institutions that have online account opening capabilities be considered in the local rate surveys?
- In addition to local banks and credit unions and online financial institutions we also should consider the real presence of brokered deposits offered locally across the country. Anytime a local survey analysis is performed it should consider the brokered options where broker representatives are active in the market footprint of the financial institution.
- Shouldn't rate surveys to determine the market for insured deposits include credit unions as well as banks?
- Respecting that depositors are always seeking the highest yield for the shortest terms, shouldn't any non-standard term offerings be incorporated into consideration of market rates? Please note additional comments on this topic in the 2018 article cited earlier here.
- There will always remain a major flaw in using survey data to determine available market offerings because they will never capture the negotiated accounts that financial institutions book without sharing in any surveys.

To return to the purpose of the regulation on rate caps which is to protect the FDIC insurance fund from financial institution managers who deepen financial failure of banks as they attract above-market funding to sustain operation of an unsustainable business, the real solution on this is to address the assets that are producing loss of capital. Beyond that, to support curtailment of options, regulations could become more sophisticated to address the issues I have identified in improving the survey processes for national and local market assessments. A better way may be to consider the derived demand of deposits and go back to addressing it by calibrating with fixed income instruments like US Treasuries and FHLB advance rates that ultimately create valid and generally consistent measures of opportunity costs of retail deposits.

Ideally, the industry could adopt a simple algorithm that is a combination of the survey enhancements identified here and a measure of Treasuries or FHLB advance rates. By resetting the cap to be the greater of the previous rule and the current rule (hopefully with suggested survey enhancements) we could promptly improve the regulatory environment while protecting the FDIC insurance fund. This would eliminate the unintended dramatic impacts that have been observed from the current situation and the situation that led to the switch from the former Treasury based cap to today's approach. Both versions were supported by regulators as having the impact of keeping institutions from becoming over-aggressive in funding risky assets by using above-market brokered and local deposits. Doesn't it stand to reason that adopting the two rules in tandem would give more flexibility while still preventing the abuse the regulation was intended to curtail?

Please move swiftly to address this unintended industry vulnerability.

Thank you for the opportunity to comment.

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